

Exhibit 36

CONFIDENTIAL

Page 1

CONFIDENTIAL - ALEXANDER W. DICK, ESQ.
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: :
: Master File No.
Global Brokerage, Inc. : 1:17-cv-00916-RA
F/k/a FXCM, Inc. :
Securities Litigation :
----- :

REMOTE VIDEO DEPOSITION VIA ZOOM OF:
ALEXANDER W. DICK, ESQ.
WEDNESDAY, NOVEMBER 18, 2020

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR
JOB NO. 4336849

CONFIDENTIAL

<p style="text-align: right;">Page 294</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 I would direct you down to (d),</p> <p>3 stipulate that the record basis for this order is</p> <p>4 entered shall consist solely of filings -- of</p> <p>5 findings contained in this order to which</p> <p>6 respondents have consented in the offer, and, (e)</p> <p>7 consent solely for the basis of this offer to the</p> <p>8 commission's entry of this order that makes</p> <p>9 findings and by the commission and orders</p> <p>10 respondents to cease and desist, et cetera.</p> <p>11 Do you see that language?</p> <p>12 A. Yes.</p> <p>13 Q. Were you involved in the process of</p> <p>14 negotiating this offer of settlement?</p> <p>15 A. I was not.</p> <p>16 Q. And did you see any drafts or</p> <p>17 previous versions of this order prior to its</p> <p>18 being filed?</p> <p>19 MR. DAHAN: Objection.</p> <p>20 A. No, not that I recall, no.</p> <p>21 Q. Okay. I have another document for</p> <p>22 you and then I'm going to take a break and we'll</p> <p>23 see if we can wrap this up, okay?</p> <p>24 A. Yes.</p> <p>25 (Deposition Exhibit 27, Order</p>	<p style="text-align: right;">Page 296</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 A. Not that I recall, no.</p> <p>3 MR. DAHAN: Counsel, just maybe for</p> <p>4 my clarification, I -- unless I'm looking at the</p> <p>5 wrong document, Exhibit No. 27, are you</p> <p>6 suggesting this is a prior version of the</p> <p>7 February 2017 signed CFTC order?</p> <p>8 MR. LaPOINTE: Sorry, no. I'm just</p> <p>9 trying to see if that -- it's an earlier -- I may</p> <p>10 have misspoken. It's an earlier document --</p> <p>11 MR. DAHAN: This is a totally</p> <p>12 different investigation.</p> <p>13 MR. LaPOINTE: Yeah, earlier document</p> <p>14 about a different investigation.</p> <p>15 MR. DAHAN: But nothing to do with</p> <p>16 EFFEX and covers the period of time before EFFEX</p> <p>17 -- I mean, I don't even know what the point of</p> <p>18 this document is.</p> <p>19 But to the extent that you're</p> <p>20 suggesting this was a draft of the CFTC order</p> <p>21 that we looked at, which was Exhibit 26, I</p> <p>22 totally object and I object to its relevance for</p> <p>23 purposes of --</p> <p>24 MR. LaPOINTE: I understand. I'll</p> <p>25 withdraw the question and I won't have any</p>
<p style="text-align: right;">Page 295</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 Instituting Proceedings Pursuant to Sections 6(c)</p> <p>3 and 6(d) of the Commodity Exchange Act and Making</p> <p>4 Findings and Imposing Remedial Sanctions, was</p> <p>5 marked for identification.)</p> <p>6 Q. Okay. I'm just waiting for loading.</p> <p>7 We'll just to have wait.</p> <p>8 A. No worries.</p> <p>9 Q. Alright. I am labeling this Exhibit</p> <p>10 No. 27.</p> <p>11 Just take a moment to review it and</p> <p>12 let me know when you are ready to discuss.</p> <p>13 A. Okay, I've opened it.</p> <p>14 Okay, I've reviewed it.</p> <p>15 Q. So this appears to me to be an</p> <p>16 unexecuted un-filed version of the Order</p> <p>17 Instituting Proceedings Pursuant to Section 6(c)</p> <p>18 and 6(d)" which we previously went over the final</p> <p>19 version as Exhibit No. 26.</p> <p>20 Does that sound like an accurate</p> <p>21 description to you?</p> <p>22 A. That's what it appears to me.</p> <p>23 Q. Did you ever see this version of the</p> <p>24 document either before or after the filing of the</p> <p>25 other version?</p>	<p style="text-align: right;">Page 297</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 questions with respect to it.</p> <p>3 MR. DAHAN: Thank you. That's fine.</p> <p>4 MR. LaPOINTE: If we can take a break</p> <p>5 now. I just want to make sure that there's</p> <p>6 nothing else that we need to get to, but I think</p> <p>7 we can probably wrap up pretty soon.</p> <p>8 MR. DAHAN: Okay.</p> <p>9 THE VIDEOGRAPHER: Thank you. This</p> <p>10 is the Videographer.</p> <p>11 The time is 5:41. We're going off</p> <p>12 the record.</p> <p>13 (Recess taken 5:41 to 5:45 p.m.)</p> <p>14 THE VIDEOGRAPHER: The time is 5:45.</p> <p>15 We're back on the record. This is the beginning</p> <p>16 of Media File 8.</p> <p>17 Q. I'd just like to direct your</p> <p>18 attention back to the exhibit previously numbered</p> <p>19 19.</p> <p>20 Can you bring that up?</p> <p>21 A. Okay, yes.</p> <p>22 Q. This is the original April 14, 2010</p> <p>23 option agreement that was executed in which you</p> <p>24 testified was -- it is your belief terminated</p> <p>25 orally shortly thereafter; is that a fair</p>

75 (Pages 294 - 297)

CONFIDENTIAL

<p style="text-align: right;">Page 298</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 assessment of your previous testimony?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Just a couple of additional</p> <p>5 questions on this.</p> <p>6 Who made the decision to terminate</p> <p>7 this agreement?</p> <p>8 A. I don't know who made the decision to</p> <p>9 terminate it.</p> <p>10 Q. Do you know if Mr. Ahdout was</p> <p>11 involved?</p> <p>12 A. My understanding is Mr. Ahdout was</p> <p>13 the one who orally terminated it.</p> <p>14 Q. Okay. But you don't know which party</p> <p>15 made the decision to terminate the option?</p> <p>16 A. Well, let me ask you to clarify.</p> <p>17 Are you saying between FXCM and EFFEX</p> <p>18 who terminated?</p> <p>19 Q. Yes.</p> <p>20 A. My understanding is that FXCM</p> <p>21 terminated it.</p> <p>22 Q. Okay, that was my question.</p> <p>23 A. Well, you know, my understanding was</p> <p>24 -- if I can correct my -- my understanding was</p> <p>25 both parties mutually agreed to terminate it. My</p>	<p style="text-align: right;">Page 300</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 it was terminated.</p> <p>3 So you're saying who at FXCM made the</p> <p>4 decision to terminate? You used the word</p> <p>5 "exercise."</p> <p>6 MR. LaPOINTE: I meant -- I said,</p> <p>7 "not to exercise."</p> <p>8 MR. DAHAN: Well, again, it wasn't a</p> <p>9 matter of "exercise." It was terminated.</p> <p>10 MR. LaPOINTE: There was a time</p> <p>11 between when it was executed and when it was</p> <p>12 terminated in which FXCM had the option and could</p> <p>13 have executed it.</p> <p>14 MR. DAHAN: Well, ask him how much</p> <p>15 time there was. Maybe that was one day. So why</p> <p>16 don't you ask him how long -- you know, when it</p> <p>17 set that up, first for a foundation.</p> <p>18 MR. LaPOINTE: I don't think I</p> <p>19 actually need that foundation. So I'm just going</p> <p>20 to ask the question again.</p> <p>21 MR. DAHAN: Okay.</p> <p>22 Q. Who at FXCM made the determination</p> <p>23 not to exercise this option when it was available</p> <p>24 to them?</p> <p>25 A. My understanding is that the option</p>
<p style="text-align: right;">Page 299</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 understanding was that it was FXCM that prompted</p> <p>3 that but that both parties mutually agreed.</p> <p>4 Q. So how did FXCM prompt the parties to</p> <p>5 agree to terminate that agreement?</p> <p>6 A. My understanding is that William</p> <p>7 Ahdout reached out to John Dittami and said, we</p> <p>8 want to terminate this and both parties mutually</p> <p>9 agreed orally to terminate it through some oral</p> <p>10 conversation.</p> <p>11 Q. There was no written memorialization</p> <p>12 of it at that time?</p> <p>13 A. "At that time," meaning, back in, you</p> <p>14 know, April, May or someplace around that 2010;</p> <p>15 is that your question?</p> <p>16 Q. Yes.</p> <p>17 A. Yep. My understanding is that there</p> <p>18 was no written memorialization at that time.</p> <p>19 Q. And who made the determination not to</p> <p>20 exercise this option within FXCM?</p> <p>21 MR. DAHAN: Objection.</p> <p>22 Are you back to termination?</p> <p>23 MR. LaPOINTE: Excuse me?</p> <p>24 MR. DAHAN: You asked who made the</p> <p>25 decision not to exercise it. He was telling you</p>	<p style="text-align: right;">Page 301</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 -- the opportunity to exercise the option never</p> <p>3 existed. I don't know that there was any</p> <p>4 decision not to exercise.</p> <p>5 Q. And who made the decision not to</p> <p>6 execute the 2011 documents with respect to --</p> <p>7 scratch that.</p> <p>8 Let me go back in and correct the --</p> <p>9 rephrase the question. And just a moment.</p> <p>10 Bringing your attention back to</p> <p>11 Exhibit 20. This is the e-mail attaching drafts</p> <p>12 of an option agreement, an operating agreement,</p> <p>13 an FXCM services agreement and an agreement for</p> <p>14 services dated around June 15, 2011.</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall we previously discussed</p> <p>17 this and it attached a number of draft</p> <p>18 agreements, which you testified were never</p> <p>19 executed or finalized?</p> <p>20 A. Yes.</p> <p>21 Q. Who made the determination not to</p> <p>22 pursue any of those opportunities?</p> <p>23 A. You know, I think, we talked about</p> <p>24 this and, I think, I answered this already. I</p> <p>25 don't know of a formal decision where something</p>

CONFIDENTIAL

<p style="text-align: right;">Page 302</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 was decided to not pursue this.</p> <p>3 My recollection is that FXCM never</p> <p>4 was interested in this and that -- well, you</p> <p>5 know, FXCM never finalized any interest in this</p> <p>6 or desire to pursue it and it was dropped.</p> <p>7 But I don't -- my recollection -- I</p> <p>8 don't recall any, you know, finality or line</p> <p>9 drawn. My recollection is that it just went</p> <p>10 away. It never came up again.</p> <p>11 Q. So it was, basically, just put in the</p> <p>12 drawer?</p> <p>13 A. Well, you know, at least, in my</p> <p>14 perspective, you know, what I did for this which</p> <p>15 was, you know, draft documents, exchanged them at</p> <p>16 the direction of the company. I don't recall</p> <p>17 doing anything.</p> <p>18 Q. Do you know who was responsible for</p> <p>19 dropping the ball, if there were conversations</p> <p>20 back and forth, if it just sort of went away?</p> <p>21 A. No, I don't recall who "dropped the</p> <p>22 ball."</p> <p>23 Q. So, the April 14, 2010 option, you've</p> <p>24 testified that that was terminated orally shortly</p> <p>25 after its execution in 2010.</p>	<p style="text-align: right;">Page 304</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 agreement. It sounds like these were considered</p> <p>3 -- these were plans that were considered by EFFEX</p> <p>4 and FXCM. But, you know, being just the lawyer</p> <p>5 that drafts documents, I wasn't part of the</p> <p>6 decision to -- so, you know, a decision to pursue</p> <p>7 this. So I don't know who instigated this or why</p> <p>8 it was pursued.</p> <p>9 Q. Why, if you know, was the termination</p> <p>10 of the April 2010 option not memorialized in</p> <p>11 writing until 2014, three years after it was</p> <p>12 purportedly terminated early?</p> <p>13 A. I -- I would say that the company</p> <p>14 didn't consider memorializing in writing</p> <p>15 necessary because the option didn't exist, the</p> <p>16 consideration never occurred. As we discussed,</p> <p>17 there was never a loan, there was never a license</p> <p>18 agreement. And the -- both parties orally agreed</p> <p>19 that it was terminated and of no effect, you</p> <p>20 know, proven in point of the fact that they start</p> <p>21 executing -- I mean, both parties, FXCM and</p> <p>22 EFFEX, start negotiating a completely new option</p> <p>23 agreement how many years later.</p> <p>24 So I don't believe that memorializing</p> <p>25 it in writing -- the company didn't believe it</p>
<p style="text-align: right;">Page 303</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 After that was terminated in 2010,</p> <p>3 what was the basis for drafting and exchanging</p> <p>4 drafts of this other option agreement attached to</p> <p>5 this e-mail a year later?</p> <p>6 A. I'm not sure I understand your</p> <p>7 question.</p> <p>8 Q. So, in Exhibit No. 20, this attached</p> <p>9 a draft option agreement, which was Exhibit</p> <p>10 No. 21 --</p> <p>11 A. Right.</p> <p>12 Q. -- that we previously looked at, you</p> <p>13 testified that that was never executed or entered</p> <p>14 into, right?</p> <p>15 A. Yes.</p> <p>16 Q. Why was it discussed? Why was it</p> <p>17 offered? Why were drafts exchanged after the</p> <p>18 previous option agreement had been terminated by</p> <p>19 mutual agreement in 2011?</p> <p>20 A. I don't know, personally. At some</p> <p>21 point it must have been part of some sort of</p> <p>22 proposal for the parties to enter into an</p> <p>23 arrangement where there would be an amendment to</p> <p>24 a services agreement, an option agreement, some</p> <p>25 sort of contemplated different services</p>	<p style="text-align: right;">Page 305</p> <p>1 CONFIDENTIAL - ALEXANDER W. DICK, ESQ.</p> <p>2 was necessary.</p> <p>3 Q. So who determined to memorialize</p> <p>4 termination of the 2010 option in 2014?</p> <p>5 A. Without getting into privileged</p> <p>6 conversations, it was part of outside Counsel's</p> <p>7 representation of FXCM.</p> <p>8 Q. And why was it determined that the</p> <p>9 termination should be memorialized at that point?</p> <p>10 MR. DAHAN: Objection to the extent</p> <p>11 that you're asking him to divulge privileged</p> <p>12 communication.</p> <p>13 MR. LaPOINTE: I will modify the</p> <p>14 previous question.</p> <p>15 Q. Without divulging privileged</p> <p>16 communications or without getting into any</p> <p>17 privileged material.</p> <p>18 A. I don't have an answer without</p> <p>19 divulging privileged material.</p> <p>20 Q. Was there anything else going on at</p> <p>21 that time that contributed to the determination</p> <p>22 to memorialize the termination at that point?</p> <p>23 MR. DAHAN: Object to the form.</p> <p>24 A. Again, I don't -- I can't -- without</p> <p>25 divulging privileged conversations with outside</p>